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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ANN OTSUKA, an individual; JANIS KEEFE, an individual; CORINNE PHIPPS, an individual; and JUSTIN KISER, an individual; and on behalf of all other similarly situated,

Plaintiff(s),

v.

POLO RALPH LAUREN CORPORATION, a Delaware Corporation; POLO RETAIL, LLC, a

State Court Case No.: CGC-06-452655

**DEFENDANTS' NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. § 1441(b) AND 28 U.S.C. § 1453(b) UNDER GENERAL DIVERSITY JURISDICTION (28 U.S.C. § 1332(a)) AND CLASS ACTION FAIRNESS ACT (28 U.S.C. § 1332(d))**

ORIGINAL  
FILED

MAY 29 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-filing

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1 Delaware Corporation; POLO RALPH  
2 LAUREN CORPORATION, a Delaware  
3 Corporation, doing business in California as  
4 POLO RETAIL CORP; FASHIONS OUTLET  
OF AMERICA, INC., a Delaware Corporation  
and DOES 1-500, inclusive,

5 Defendant(s)

6 AND RELATED CROSS-ACTION.  
7

8 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

9 PLEASE TAKE NOTICE that Defendants POLO RALPH LAUREN CORPORATION,  
10 POLO RETAIL, LLC., POLO RALPH LAUREN CORPORATION DBA POLO RETAIL  
11 CORP., and FASHIONS OUTLET OF AMERICA, INC. ("Defendants") hereby remove to this  
12 Court the state court action described below.

13 Introduction

14 Plaintiffs Ann Otsuka, Janis Keefe, Corinne Phipps and Justin Kiser ("Plaintiffs") brought  
15 this class action lawsuit alleging, *inter alia*, wage and hour violations under California law. Based  
16 on discovery responses recently made by Plaintiff Janis Keefe, and served on Defendants,  
17 Defendants have ascertained that the jurisdictional requirements for removal to federal court,  
18 under both general diversity jurisdiction and the Class Action Fairness Act of 2005, are met.

19 Background Information

20 1. On May 30, 2006, Plaintiffs Ann Otsuka, Janis Keefe, Corinne Phipps and Justin  
21 Kiser ("Plaintiffs") commenced an action in the Superior Court of the State of California, County  
22 of San Francisco against Defendants entitled *Otsuka v. Polo Ralph Lauren Corp.*, Case No. CGC-  
23 06-452655 (the "State Court Action"). Plaintiffs' filed their First Amended Class Action  
24 Complaint on July 20, 2007 and served Defendants on July 28, 2007, a copy of which is attached  
25 hereto as Exhibit 7. Defendants filed an Answer on February 28, 2007, a copy of which is  
26 attached hereto as Exhibit 38.  
27  
28

1           2. Pursuant to 28 U.S.C. § 1446(a), Defendants are attaching copies of all pleadings  
2 and orders that have been filed the State Court Action to date. A copy of the Superior Court of  
3 California, County of San Francisco Register of Actions is attached hereto as **Exhibit 1**.

4           3. Attached as **Exhibit 2** is a true and correct copy of the Complaint and Civil Cover  
5 Sheet filed May 30, 2006.

6           4. Attached as **Exhibit 3** is a true and correct copy of Notice to Plaintiff filed May  
7 30, 2006.

8           5. Attached as **Exhibit 4** is a true and correct copy of Summons and Notice of  
9 Service for Polo Ralph Lauren Corporation filed on June 12, 2006.

10          6. Attached as **Exhibit 5** is a true and correct copy of Summons and Notice of  
11 Service for Fashions Outlet of America Inc., filed June 12, 2006

12          7. Attached as **Exhibit 6** is a true and correct copy of Summons and Notice of  
13 Service for Polo Retail LLC filed June 12, 2006.

14          8. Attached as **Exhibit 7** is a true and correct copy of First Amended Complaint filed  
15 July 20, 2006.

16          9. Attached as **Exhibit 8** is a true and correct copy of Proof of Service of First  
17 Amended Class Action Complaint for Polo Ralph Lauren Corporation filed August 3, 2006.

18          10. Attached as **Exhibit 9** is a true and correct copy of Proof of Service of First  
19 Amended Complaint for Fashions Outlet of America Inc., filed August 3, 2006.

20          11. Attached as **Exhibit 10** is a true and correct copy of Proof of Service of Amended  
21 Class Action Complaint for Polo Retail LLC filed August 3, 2006.

22          12. Attached as **Exhibit 11** is a true and correct copy of Defendants' Ex Parte  
23 Application for Order for Extension of Time to Respond to First Amended Complaint,  
24 Declaration of Ravi Motwani, Esq., Declaration of William J. Goines, Declaration of Jeremy A.  
25 Meier, and Proposed Order Granting Defendants' Ex Parte Application, all filed September 8,  
26 2006.

27          13. Attached as **Exhibit 12** is a true and correct copy of Complex Case Designation  
28 filed September 8, 2006.

1           14. Attached as **Exhibit 13** is a true and correct copy of Declaration of Patrick R.  
2           Kitchin in Opposition to Defendants' Ex Parte Application for Extension of Time to Serve  
3           Responsive Pleadings filed September 8, 2006.

4           15. Attached as **Exhibit 14** is a true and correct copy of Order Granting Defendants'  
5           Ex Parte Application for Order Extending Time to Respond to First Amended Complaint filed  
6           September 12, 2006.

7           16. Attached as **Exhibit 15** is a true and correct copy of Notice of Entry of Order/  
8           Notice of Ruling Granting Defendants' Ex Parte Application for Order Extending Time to  
9           Respond to First Amended Complaint filed September 15 2006.

10          17. Attached as **Exhibit 16** is a true and correct copy of Defendants' Application for  
11          Approval of Complex Litigation and Declaration of William J. Goines, both filed September 18,  
12          2006.

13          18. Attached as **Exhibit 17** is a true and correct copy of Defendants' Case  
14          Management Statement filed October 12, 2006.

15          19. Attached as **Exhibit 18** is a true and correct copy of Defendants' Demurrer to First  
16          Amended Complaint, Notice of Hearing, Memorandum of Points and Authorities, and Proposed  
17          Order, all filed October 12, 2006.

18          20. Attached as **Exhibit 19** is a true and correct copy of Plaintiffs' Case Management  
19          Statement filed October 13, 2006.

20          21. Attached as **Exhibit 20** is a true and correct copy of Order Continuing Case  
21          Management Conference filed October 18, 2006.

22          22. Attached as **Exhibit 21** is a true and correct copy of Plaintiffs' Opposition to  
23          Demurrer to First Amended Complaint filed November 2, 2006.

24          23. Attached as **Exhibit 22** is a true and correct copy of Defendants' Memorandum of  
25          Points and Authorities in Reply to Plaintiffs' Opposition to Demurrer to First Amended  
26          Complaint filed November 7, 2006.

27          24. Attached as **Exhibit 23** is a true and correct copy of Defendants' Notice of  
28          Application and Application to Admit Counsel Pro Hac Vice, Declaration of Brian S. Cousin,

1 Declaration of William J. Goines, and Proposed Order, together with Notice of Application and  
2 Application to Admit Counsel Pro Hac Vice, Declaration of Neil A. Capobianco, Declaration of  
3 William J. Goines, and Proposed Order, all filed November 8, 2006.

4 25. Attached as **Exhibit 24** is a true and correct copy of Mini-Minutes continuing  
5 hearing on Defendants' Demurrer to First Amended Complaint filed November 5, 2006.

6 26. Attached as **Exhibit 25** is a true and correct copy of Order Continuing Case  
7 Management Conference filed November 28, 2006.

8 27. Attached as **Exhibit 26** is a true and correct copy of Order Granting Application  
9 for Approval of Complex Case Designation and for Single Assignment filed November 30, 2006  
10 (*incorrectly noted on the docket as filed November 27, 2006*).

11 28. Attached as **Exhibit 27** is a true and correct copy of Mini-Minutes taking off  
12 calendar hearing on Defendants' Demurrer to First Amended Complaint filed December 5, 2006.

13 29. Attached as **Exhibit 28** is a true and correct copy of Mini-Minutes taking off  
14 calendar hearing on Defendants' Applications to Admit Counsel *Pro Hac Vice* filed December 7,  
15 2006.

16 30. Attached as **Exhibit 29** is a true and correct copy of Order Granting Application  
17 for Appearance of Brian S. Cousin *Pro Hac Vice* filed December 11, 2006.

18 31. Attached as **Exhibit 30** is a true and correct copy of Order Granting Application  
19 for Appearance of Neil A. Capobianco *Pro Hac Vice* filed December 11, 2006.

20 32. Attached as **Exhibit 31** is a true and correct copy of Defendants' Re-Notice of  
21 Hearing of Demurrer to First Amended Complaint filed December 13, 2006.

22 33. Attached as **Exhibit 32** is a true and correct copy of Joint Case Management  
23 Conference Statement filed January 17, 2007.

24 34. Attached as **Exhibit 33** is a true and correct copy of Court Minutes on hearing for  
25 Defendants' Demurrer to the First Amended Complaint and Case Management Conference filed  
26 January 22, 2007.

27 35. Attached as **Exhibit 34** is a true and correct copy of Notice of Entry of Order  
28 Granting Application for Appearance of Brian S. Cousin *Pro Hac Vice* filed January 29, 2007.

1           36. Attached as **Exhibit 35** is a true and correct copy of Notice of Entry of Order  
2 Granting Application for Appearance of Neil A. Capobianco *Pro Hac Vice* filed January 29,  
3 2007.

4           37. Attached as **Exhibit 36** is a true and correct copy of Order Overruling in Part and  
5 Sustaining in Part Defendants' Demurrer to First Amended Complaint filed February 7, 2007.

6           38. Attached as **Exhibit 37** is a true and correct copy of Notice of Entry of Order  
7 Overruling in Part and Sustaining in Part Defendants' Demurrer to First Amended Complaint  
8 filed February 13, 2007.

9           39. Attached as **Exhibit 38** is a true and correct copy of Defendants' Answer to First  
10 Amended Complaint filed February 28, 2007.

11           40. Attached as **Exhibit 39** is a true and correct copy of Defendant Fashions Outlet of  
12 America, Inc.'s Cross-Complaint filed February 28, 2007.

13           41. Attached as **Exhibit 40** is a true and correct copy of Joint Case Management  
14 Conference Statement filed April 3, 2007.

15           42. Attached as **Exhibit 41** is a true and correct copy of Court Minutes on Case  
16 Management Conference filed April 5, 2007.

17           43. Attached as **Exhibit 42** is a true and correct copy of Stipulated Protective Order  
18 filed April 26, 2007.

19           44. Attached as **Exhibit 43** is a true and correct copy of Notice of Motion and Motion  
20 to be Relieved as Counsel, Declaration of Patrick R. Kitchin, and Proposed Order filed April 23,  
21 2007.

22           45. Attached as **Exhibit 44** is a true and correct copy of Plaintiff/Cross-Defendant  
23 Kiser's Notice of Demurrer and Demurrer to Cross-Complaint and Proposed Order filed April 24,  
24 2007.

25           46. Attached as **Exhibit 45** is a true and correct copy of Plaintiff/Cross-Defendant  
26 Kiser's Amended Notice of Demurrer and Demurrer to Cross-Complaint and Proposed Order  
27 filed May 14, 2007.



47. Attached as **Exhibit 45** is a true and correct copy of correspondence to the Court with Second Amended Complaint, Stipulation re Filing of Second Amended Complaint, and Proposed Order served May 17, 2007.

### The Parties

48. At the time of filing of the original Complaint, Plaintiff Ann Otsuka was an individual who resided, and at all times relevant has resided, in Santa Clara County, California, who is a citizen of the State of California. Complaint at ¶ 1, **Exhibit 2**.

49. At the time of filing of the original Complaint, Plaintiff Corinne Phipps was an individual who resided, and at all times relevant has resided, in San Francisco County, California, who is a citizen of the State of California. Complaint at ¶ 2, **Exhibit 2**.

50. At the time of filing of the original Complaint, Plaintiff Janis Keefe was an individual who at all times relevant resided in San Francisco County, California, who is now a citizen of the Commonwealth of Kentucky. Complaint at ¶ 4, Exhibit 2.

51. At the time of filing of the original Complaint, Plaintiff Justin Kiser was an individual who at all times relevant resided in Contra Costa County, California, who is a citizen of the State of California. Complaint at ¶ 3, **Exhibit 2**.

52. Defendant Polo Ralph Lauren Corp. is a Delaware Corporation with its principal place of business in the State of New York.

53. Defendant Polo Retail, LLC., is a Delaware Corporation with its principal place of business in the State of New York.

54. Defendant Polo Ralph Lauren Corporation doing business in California as Polo Retail Corp., is a Delaware Corporation with its principal place of business in the State of New York.

55. Defendant Fashions Outlet of America, Inc. is a Delaware Corporation with its principal place of business in the State of New York.

### **Timeliness of Removal**

56. On May 14, 2007, upon receipt of "Response to Defendants' Special Interrogatories Propounded to Plaintiff, Janis Keefe, Set One," it became first ascertainable to

1 Defendants that this case is removable to federal court. Thus, Defendants are now timely  
2 removing this action within thirty (30) days of receiving an "other paper from which it may first  
3 be ascertained that the case is one which is or has become removable" as required by 28 U.S.C.  
4 section 1446(b). Plaintiff Keefe's responses marks the first time that Plaintiffs specified in any  
5 detail the damages which Plaintiffs are claiming for violation of California law, in particular,  
6 California Labor Code sections 510, 204, 221, 201, 202, 203, 226 and 232, Business and  
7 Professions Code sections 17200, et seq. and the Private Attorneys General Act.

8 **Basis for Removal**

9 57. This action is a civil action of which this Court has original jurisdiction under 28  
10 U.S.C. § 1332(a) and is one which may be removed to this court by Defendants pursuant to the  
11 provisions of 28 U.S.C. §§ 1441(b) and 1446(a), because the matter in controversy exceeds the  
12 sum of \$75,000, exclusive of interest and costs, because Plaintiff Justin Kiser's claimed economic  
13 and compensatory damages, punitive damages, attorney's fees are in excess of the \$75,000  
14 jurisdictional requirement and is being removed within one (1) year after commencement of the  
15 State Court Action.

16 58. Additionally, this matter may be removed pursuant to 28 U.S.C. §§ 1446(a) and  
17 1453(b) because the Court has original jurisdiction under 28 U.S.C. § 1332(d), the Class Action  
18 Fairness Act of 2005, Pub.L. 109-2 § 4(a), 119 Stat. 9, and this action may thus be removed to  
19 this Court by Defendants pursuant to the provisions of 28 U.S.C. § 1441(b): because (1) the  
20 matter in controversy exceeds \$5,000,000 and (2) any member of a class of Plaintiffs is a citizen  
21 of a State different from any of the Defendants.

22 59. Based on the interrogatory responses made by Plaintiff Janis Keefe, that appear to  
23 claim that Ms. Keefe is entitled to one additional hour of pay for each day that she worked for the  
24 alleged failure to provide meal or rest periods, and the recent California Supreme Court decision  
25 in the matter of *Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal.4th 1094 (2007), the matter in  
26 controversy exceeds the \$5,000,000 minimum jurisdictional requirement under 28 U.S.C. §  
27 1332(d). Additionally, based on Ms. Keefe's interrogatory responses, the \$75,000 jurisdictional  
28 requirement is met under 28 U.S.C. § 1332(a).



60. The action is a civil action between citizens of different States because Plaintiffs are and at the time the State Court Action was filed, citizens of the State of California and the Commonwealth of Kentucky, and Defendants each and independently are, and at the time the State Court Action was filed, were, Delaware Corporations with principal places of businesses in the State of New York.

Dated: May 29, 2007

GREENBERG TRAURIG, LLP

By: 

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